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SUBJECT: WIPO Patent Cooperation Treaty (PCT) Working Group, Second Session

**¶1. SUMMARY:** At the Second Session of the Patent Cooperation Treaty (PCT) Working Group, delegates mainly discussed proposals to make the operation of the PCT more efficient. In addition, the form of amendments, eligibility criteria for reductions in certain fees, equivalent amounts of certain fees, and an international form for national phase entry were discussed. Despite general support for further work on PCT reform, developing countries clearly signaled that more outreach and explanations of proposed changes are needed, and that significant changes to the PCT are out of reach at this time. END SUMMARY

The Future of the PCT: under study

**¶2.** The Second Session of the Patent Cooperation Treaty (PCT) Working Group was held in Geneva from May 4 to May 8, 2009. The main document, ?the Future of the PCT,? and related documents on PCT reform stimulated lively discussion. The document suggested means to improve the efficiency of the PCT without changing the treaty. Some of the additional PCT reform proposals, including of the United States, suggested taking a broader approach and to consider revising the treaty. Many developing countries complained that, although other Offices and users had been consulted, they had not been, and that they had been given insufficient time to review the proposals. In addition, they indicated that the lack of availability of the document in Spanish hindered their ability to consider the document.

**¶3.** India, China and the African Group insisted throughout the meeting that before work could be done on how to improve the operation of the PCT, a study should be conducted into the sources of problems within the international patent system. In addition, they questioned the meaning of ?unnecessary duplication,? suggesting that for developing countries a certain amount of duplication should be more tolerable. China and India expressed concern with specific text in the ?Future of the PCT? that suggested that their authority to apply additional requirements of patentability would be limited. China indicated that they perform a more complete search of prior art in the national stage, because they search more Chinese language documents in the national stage than in the international stage. In addition, China mentioned that they have a requirement of the source of a genetic resource, and they should be able to enforce such a requirement. India mentioned Article 3(d) of their patent law as imposing an additional requirement of patentability, and that the PCT does not preclude such an additional requirement.

**¶4.** The International Bureau (IB) indicated that the ?Future of the PCT? does not contemplate changing the framework of the PCT, or seek to harmonize substantive

patent law. In addition, the IB pointed to provisions of the PCT that clearly provide that nothing in the treaty or regulations to the treaty limits the freedom of Contracting States to prescribe substantive conditions of patentability as it desires. Even given this repeated explanation, India and others continued to express suspicion of an objective to harmonize patent laws and to force Contracting Parties to accept decisions on patentability of International Searching Authorities.

¶ 15. Ultimately, the Working Group agreed that the relevant PCT bodies should continue their work to improve the PCT.

¶ 16. In addition, the Working Group agreed that future work on improving the PCT system should be informed by a study that will be performed by the IB. The study will identify the existing problems and challenges facing the PCT system and define and clarify concepts such as ?duplication of work,? and ?unnecessary actions.? The study should be prepared and submitted to the Working Group at least two months before the next Working Group meeting.

#### Other Issues

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¶ 17. As to access to the PCT, it was agreed that the relevant PCT bodies should prepare proposals to increase access to the PCT for independent inventors and/or natural persons, small and medium sized enterprises, universities and research institutions, in particular from developing and least developed countries.

¶ 18. The following were agreed upon and will be sent to the PCT Assembly at its next session, subject to drafting as agreed during the meeting, and possible further drafting changes to be made by the Secretariat:

-- Form of amendments, the proposed amendments of the Regulations set out in the Annex to document PCT/WG/2/9;

-- Establishment of equivalent amounts of certain fees, amendments of the Regulations as set out in Annex I to document PCT/WG/2/2, amendments to the Directives of the Assembly set out in Annex II to document PCT/WG/2/2 and amendments to Article 11 of the Agreements between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities as set out in Annex III to document PCT/WG/2/2; ; and

-- Supplementary international search, the proposed amendments of the Regulations set out in the Annex to document PCT/WG/2/10.

¶ 19. As to the eligibility criteria for reductions in certain fees, the Working Group agreed to request the Secretariat to carry out studies requested by the delegations of Barbados and Singapore, and to present those studies to the next session of the Working Group.

¶ 110. As to presentation of revisions to international applications, further consultations will be made by circulars.

¶ 111. As to the international form for national phase entry, there was no consensus for further work on this proposal.

¶ 112. Delegates were unable to complete the adoption of the report by the end of the meeting on Friday, May 8, 2009. Accordingly, the Working Group agreed a draft report of the present session would be circulated for comments and adoption by correspondence subsequent to the meeting.

¶ 113. The United States delegation included Karin Ferriter (USPTO) and Charles Pearson (USPTO).

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